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SERVICE DATE - OCTOBER 27, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 168X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—  
IN HARDIN COUNTY, IA (ELDORA JUNCTION LINE IN ELDORA, IA)

Decided: October 25, 2004

By decision and notice of interim trail use or abandonment (NITU) served on April 8, 2003, the Board granted to Union Pacific Railroad Company (UP) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a segment of line, known as the Eldora Junction Line, extending from milepost 5.10 to milepost 6.22, a distance of 1.12 miles, in Eldora, Hardin County, IA. Also, in response to a request by the City of Eldora, IA, and the Iowa Natural Heritage Foundation (collectively, the City) that the Board issue a NITU for the line, and in light of UP's willingness to enter into trail use negotiations with the City, the Board issued a NITU for a 180-day negotiating period that extended until October 5, 2003. The negotiating period was subsequently extended several times, with the latest extension expiring on October 8, 2004.

By letter filed on October 12, 2004, and corrected on October 19, 2004, the City requests another extension of the NITU negotiating period. The City states that the parties need more time to finalize the acquisition of the corridor, and it asks for an extension to April 8, 2005.<sup>1</sup> The City asserts that UP has taken no actions inconsistent with trail use and rail banking. In a letter filed on October 14, 2004, and corrected on October 18, 2004, UP states that it is willing to continue to negotiate with the City and supports the request to extend the negotiating period.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the requested extension will be granted.

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<sup>1</sup> Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company—Abandonment Exemption—In Jackson, Victoria and Wharton Counties, TX, Docket No. AB-12 (Sub-No. 162X) (STB served May 29, 1996).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request to extend the interim trail use negotiating period is granted.
2. The negotiating period under the NITU is extended to April 8, 2005.
3. This decision is effective on its date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary